

**D.S., Appellant**

**U.S. POSTAL SERVICE, POST OFFICE,  
Taylorsville, GA, Employer**

### Case Submitted on the Record

## JURISDICTION

**ISSUE**

<sup>2</sup> OWCP received evidence after it issued the September 28, 2017 decision. The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Therefore, evidence not before OWCP at the time of the September 28, 2017 decision will not be considered by the Board for the first time on appeal.

### **FACTUAL HISTORY**

On August 21, 2017 appellant, a 35-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that he sustained a low back injury in the performance of duty on August 19, 2017 when his postal vehicle was struck by another vehicle.<sup>3</sup> A supervisor noted on the reverse side of claim form that the motor vehicle accident occurred in the performance of duty. Appellant stopped work on August 19, 2017 and returned to regular duty on September 6, 2017.

An authorization for examination and/or treatment form (Form CA-16) was completed by an employing establishment official on August 21, 2017 and purported to authorize treatment as a result of the August 19, 2017 injury.

In a development letter dated August 23, 2017, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. To establish the factual portion of his claim, appellant was provided a questionnaire to complete. OWCP also informed appellant that rationalized medical evidence was needed to establish his claim. Appellant was afforded 30 days to respond.

OWCP received an August 19, 2017 x-ray report of appellant's thoracic spine which found no acute displaced fractures. It also received an August 19, 2017 computerized tomography (CT) scan which found no evidence of cervical spine fracture.

In an August 23, 2017 report, Dr. Jessica Stepp, a family practitioner, reported that on August 19, 2017 appellant's mail jeep was hit so hard by another motor vehicle that the jeep landed on a truck's bed. She reported that appellant was evaluated at the emergency room and that a CT scan of the cervical spine and x-rays of the lumbar and thoracic spines showed nothing acute. Dr. Stepp provided an assessment of acute bilateral low back pain without sciatica and motor vehicle collision (MVC).

In an August 23, 2017 duty status report (Form CA-17), Dr. Stepp noted that appellant had low back muscle hypertonicity as a result of the MVC. The diagnosis due to injury was "pain in thoracic spine for person injured in collision between motor vehicle."

In an August 25, 2017 attending physician's report (Form CA-20), Dr. Stepp diagnosed low back pain without sciatica and MVC, which she noted, by checking a box marked "yes" that it was caused or aggravated by the August 19, 2017 motor vehicle accident.

In a September 6, 2017 report, Dr. Stepp diagnosed acute bilateral low back pain without sciatica, low back pain, and MVC. She released appellant to work without restrictions.

In a September 8, 2017 report, Dr. Stepp reported increased paraspinal muscle tone on the right lumbar area. She provided an assessment of acute bilateral low back pain without sciatica

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<sup>3</sup> OWCP assigned File No. xxxxx102 to the claim. On August 28, 2017 appellant filed a duplicate Form CA-1, which OWCP assigned File No. xxxxxx509. OWCP eventually combined the two claims, with File No. xxxxxx102 serving as the master file.

and MVC. Dr. Stepp released appellant to return to work at modified duty. She also referred him to physical therapy.

By decision dated September 28, 2017, OWCP accepted that the incident occurred as alleged, but denied appellant's claim, finding that he had failed to establish the medical component of fact of injury.<sup>4</sup>

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>6</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>9</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>11</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by

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<sup>4</sup> Under OWCP File No. xxxxxx509, OWCP issued a decision dated October 10, 2017. However, the Board acquired jurisdiction over this issue on October 10, 2017. Therefore, the October 10, 2017 decision is null and void. The Board and OWCP may not have concurrent jurisdiction over the same issue in a case. See *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990); see also 20 C.F.R. § 501.2(c)(3).

<sup>5</sup> *Supra* note 1.

<sup>6</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>10</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 2006; *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>11</sup> *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>12</sup>

### ANALYSIS

The Board finds that the evidence of record is insufficient to establish a medical diagnosis causally related to the accepted August 19, 2017 employment incident.

The medical evidence submitted by appellant included reports from Dr. Stepp, who provided a history of the August 19, 2017 injury and examination findings. After noting that the results of the CT scan of appellant's cervical spine and x-ray of the lumbar and thoracic spines showed no acute findings, Dr. Stepp provided an assessment of acute bilateral low back pain without sciatica and MVC in her August 23, 2017 report. In an August 23, 2017 duty status report (Form CA-17), she diagnosed pain in thoracic spine for person injured in collision between motor vehicle and in an August 25, 2017 attending physician's report (Form CA-20) and in her September 6 and 8, 2017 reports, she provided an assessment of acute bilateral low back pain without sciatica and MVC. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.<sup>13</sup> To establish personal injury the medical evidence of record must document a diagnosed condition and must explain how that condition is causally related to the accepted factors of employment. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, Dr. Stepp's reports are of limited probative value.<sup>14</sup>

The diagnostic reports are also of diminished probative value. These reports essentially related normal findings and offered no opinion regarding causal relationship. Therefore, these reports lacked a firm diagnosis and rationalized medical opinion regarding causal relationship as well.<sup>15</sup>

There is no other medical evidence of record which diagnosed a condition from the August 19, 2017 employment incident. For these reasons, appellant has failed to meet his burden of proof to establish an August 19, 2017 employment injury and OWCP properly denied his claim.

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<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>13</sup> *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

<sup>14</sup> *See D.S.*, Docket No. 17-0839 (issued October 12, 2017).

<sup>15</sup> *Id.*; *see also C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

On appeal appellant contends that he sustained a work-related back injury based on his physician's opinion. For the reasons set forth above, the Board finds that the weight of the medical evidence failed to establish a back condition causally related to the August 19, 2017 employment incident.<sup>16</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish an injury causally related to the accepted August 19, 2017 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>16</sup> The Board notes that the employing establishment executed a Form CA-16 on August 21, 2017 authorizing medical treatment. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).